

MT LEGISLATIVE HISTORY

Chapter 282 1959

Bill (H) 89 S _____

Original bill & hist. C

H. Committee on Banking and Insurance

S. Committee on Banks & Banking

Hearing Date(s) Jan 29 ✓ C

Hearing Date(s) Feb 24 ✓ C

Feb 03 ✓ C

 C

Feb 06 ✓ C

 C

Feb 12 ✓ C

 C

Date Out Feb 12 ✓ C

Feb 24 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

BANKING AND INSURANCE

January 29, 1959

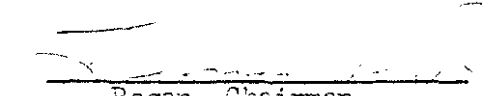
The Committee on Banking and Insurance met on recess in room 414, with the following members present: Regan, Schwinden, Sheehy, Curry, Page, Raundal, Rindy, Corcoran, Kiff and Paulsen.

HB #89 was discussed by Representatives Strnisha and Lees. Appearing for this bill were: Wesley W. Wertz, Attorney, Helena, who worked with automobile dealers in preparing this legislation. Bill Fredericks, Secretary, Montana Automobile Dealer's Association (300 members in Montana). Harold Pitts, Chairman of Installment Loan in Banker's Association and American Bankers Association. George Schotte, principal owner of Butte Ford Motor Company.

After Committee discussion, Chairman Regan stated this bill will be acted on at next Tuesday's meeting. (Mrs. Page stated she would like to leave her vote "yes" on this bill should she be absent). Sheehy moved consideration on ~~given~~ this bill be passed until Tuesday. Motion seconded by Page and carried.

HB #141. Sheehy explained this bill which had been passed by committee without amendments. After discussion, Regan asked for motion to reconsider this bill. It was moved by Sheehy that reconsideration be given this bill and motion seconded by Page which carried. This bill to be amended as follows: In the title of the bill delete in line 3 the word and figures "and 40-1204" and further amend in Section 1, Line 3, by deleting the word and figures "and 40-1204". Curry made the motion to amend this bill, seconded by Paulsen and motion carried.

No further discussion, meeting adjourned.


Regan, Chairman

BANKING AND INSURANCE

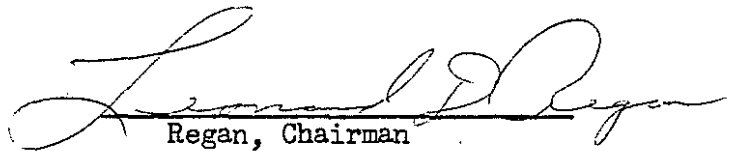
February 3, 1959

The Committee on Banking and Insurance met on recess with a quorum present.

HB #89 was discussed. Mr. Cerovski appeared and sat in on this meeting. Wesley W. Wertz, Helena Attorney, representing Montana Automobile Delaers Agency appeared and explained this bill. After Committee discussion, Curry moved this bill be put in a sub-committee for further study and possible amendments. Schwinden seconded the motion which carried. Chairman Regan appointed Curry to be Chairman, Schwinden and Fjare as sub-committee members. The sub-committee to report back at next meeting.

HB # 360, 361, 362, 363, 364, 365, 366, 367, 368 and 369 were discussed and the following appeared on these bills: Representatives Devier, Walton and Mr. Towle and Les Alke from the State Bank Department. After considerable discussion, Curry moved these bills be held and action deferred until next meeting. Motion seconded by Moudree and carried.

No further discussion, meeting adjourned.


Regan, Chairman

BANKING AND INSURANCE

February 6, 1959

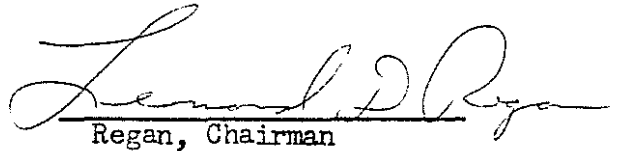
The Committee on Banking and Insurance met on recess with the following members present: Regan, Schwinden, Sheehy, Curry, Holecek, Jardine, Raundal, Rindy, Corcoran, Fjare, Kiff, Nichols and Paulsen. Majority Floor Leader Cerovski sat in on the meeting.

HB #89 - Mr. Curry discussed this bill for the sub-committee. After discussion, Curry moved this bill do pass, as amended. (see committee report for amendments). Motion seconded by Raundal and carried. As a substitute motion Schwinden moved that HB #89 be reported out of committee without recommendation. Motion seconded by Rindy and carried. (5 in favor of without recommendation - Jardine, Holecek, Raundal, Rindy, Schwinden).

HB #360 - Schwinden moved that this bill be amended by striking Section 3 in its entirety and as so amended do pass. Raundal seconded motion which carried.

HB #361 - 369, incl. - After committee discussion, Nichols moved these bills be held up until next meeting in order to have Mr. Towle appear and discuss them more fully with the committee. Curry seconded motion which carried. Cerovski moved HB 123 and 313 be put in committee of three and take parts out of both bills and make one bill. Chairman Regan appointed Sheehy, Chairman, Raundal and Kiff to the sub-committee.

No further discussion the meeting adjourned.


Regan, Chairman

Proposed Amendments
To
House Bill 89

Amend the original bill by inserting on page 4, following line 19, the following sub-section:

"(r) This act shall have no application to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by such banks or other lending institutions."

At page 14 of the original bill, at line 23, place the period after the word "contract" and delete the words and figures "after deducting from such refund an acquisition cost of Twenty Dollars (\$20.00)."

COPY

BANKING AND INSURANCE

February 12, 1959

The Committee on Banking and Insurance met on recess with a quorum present. (See Roll Call). Majority Floor Leader Cerovski sat in on the meeting.

HB #480 was discussed. Appearing for this bill were Bill Clark, Treasure State Life Insurance Company; and Walter Nilan, State Manager for Farmers Insurance Group. After Committee discussion, Paulson moved HB #480 do pass. Motion seconded by Jardine and carried.

HB # 372 and #373.

HB #372 - Holtz appeared before the Committee and discussed this bill. David Bryan, Great Falls, Credit Union League. (Discussed a proposed amendment - see Committee Report). After Committee discussion, Jardine moved that HB #372 be amended by striking in the original bill after the comma following word "act" on line 11, the words "and that the character and general fitness of the incorporators are such as to warrant his approval". Motion seconded by Schwinden and carried. Schwinden moved to amend #372 in the title of the original bill after the word "State" by adding the words "Repealing all Acts and parts of Acts in conflict herewith", and further amend this bill by adding Section 2 to read: "All Acts and parts of Acts in conflict herewith are hereby repealed." Motion seconded by Jardine and carried. Jardine then moved HB #372 as amended do pass. Motion seconded by Curry and carried.

HB #373 - Raundal moved this bill do not pass. Seconded by Rindy and motion carried.

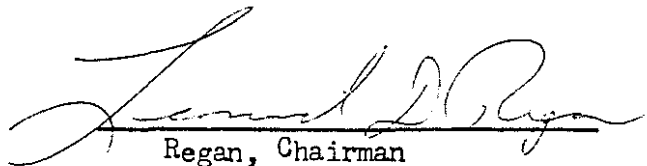
HB #431 - Clyde Gummow from the Insurance Department appeared before the Committee and discussed this bill. After Committee discussion, Jardine moved this bill do pass. Motion seconded by Curry and carried.

HB #389 - Hugh Massman, representing Public Employees, appeared as a proponent for this bill. Keith Anderson, representing Taxpayers' Association, appeared as an opponent. After Committee discussion, Jardine moved this bill do not pass. Motion seconded by Curry and carried.

HB #313 - Cerovski discussed this bill with the Committee and it was agreed that either HB #313 or HB #123 be made into one bill. Wesley W. Wertz appeared also on this bill.

HB #89 - Curry discussed the proposed amendments on this bill. (See Committee Report). Schwinden moved this bill be amended. Motion seconded by Jardine and carried. Nichols then moved HB #89 be passed as amended. Motion seconded by Curry and carried.

It was moved and seconded to adjourn.


Regan, Chairman

SENATE COMMITTEE ON
BANKS AND BANKING

The Senate Committee on Banks and Banking met in Room 404, Tuesday, February 24, 1959 at 12:40 P. M. The following committee members were present: Chairman Lehrkind, Morrow, Groff, McKenna (Judith Basin) Bovey, McDonnell and Smith. There being a quorum present, Chairman Lehrkind called the meeting to order.

House Bill No. 89 was reviewed by the Chairman. There were several visitors present to give their viewpoints on House Bill No. 89 and all were proponents.

Representative Lees was introduced and was the chief sponsor of this bill. He stated this was a buyers relief bill which puts limits on charges to be made by loan companies. Also sets up licensing as a means of identifying. He felt this was a good bill and hope the Senate Committee concurred in same.

Representative Strnisha was introduced. He is also an author of House Bill No. 89. He feels this bill is a protective measure of the buying public, who are generally unaware of dealings that can be given them. He feels that it is good legislation and the House members went out for it 100%. He hoped the Senate Committee would give it the best and that it would be concurred in. There was not one dissenting vote in the House.

Attorney Wesley W. Wirtz was introduced and gave his views on the bill. He stated the vote in the house was 82-0 in favor of this bill. Mr. Wirtz had a two page message "Comments on House Bill No. 89" which he left several copies for the Committee. He stated Kansas has adopted a measure and House Bill 89 is patterned after theirs'. He feels this bill does not allow people selling to take advantage of the buyer. He states this bill has lower rates than the State of Kansas. He stated further the House of Representatives Committee adjusted the rates. He is representing the Montana Automobile Dealers Association and states they are all for this bill. Asked if there were any questions. He feels this is a very desirable piece of legislation.

Mr. George Schotte of Butte, been in business in the Ford Agency for twenty years, was introduced. He had a photostatic copy of a deal which took place in 1952. The involved party was charged 25½% on this deal. He feels the public needs the type of protection that House Bill No. 89 would give. He left the data he had with the Senate Committee. Asked if there were any questions.

Mr. Harold Pitts, an employee of Miners National Bank in Butte, was introduced. He stated there were good and evils in sales finance. In the State of Montana the field is wide open as there is no law to cover charges between cost price and time price in financing. Charges range up to 14%. He feels that the bill as prepared would safeguard the public. Feels it is a very good protective measure. He asked if there were any questions.

Senator Groff asked if anyone had contacted the Bank Examiner.

Mr. Pitts answered Yes and he is agreeable with House Bill No. 89.

Mr. Bill Fredricks, Secretary of the Montana Automobile Dealers Association was introduced. He stated that this bill had been gone over twice with the Bank Examiner and he asked to have a special fund of the fees to be set aside in his own fund. The Bank Examiner is concerned with business being regulated. He feels it is very good legislation.

Mr. Fred Heineke, President of the First National Bank & Trust Company in Helena was introduced and was very much in favor of this Bill. He feels the schedule of rates is lower and it is very good legislation. He asked if there were any questions.

Senator Groff asked who gives the licenses. It was answered that the Superintendent of Banks does as set out in the bill, Page 5, Section 6 at the bottom of the page.

Chairman Lehrkind asked if there were any other questions. The visitors were excused.

Representative Cerovski was present and gave his views on this Bill. He stated he would like to have a skeleton on the law books at least. He hoped the Senate Committee would concur in this bill.

Chairman Lehrkind asked the pleasure of the Committee on House Bill No. 89.

Senator Smith moved that House Bill No. 89 be concurred in. Senator Groff seconded the motion. Carried. Senator McDonnell voted no, but does not wish to have a minority report.

Senator Bovey moved that the Senate Committee on Banks and Banking reconsider the action taken on Substitute House Bill No. 123. Senator Groff seconded the motion. A Roll Call vote was taken with the following results: Chairman Lehrkind - No. Morrow - Yes. Groff - Yes. McKenna Yes. Bovey - Yes. McDonnell - No. Smith - Yes. Motion carried.

Chairman Lehrkind appointed a Sub-Committee to act on/ House Bill No. 89. Senator Bovey as Chairman and Senator Morrow and Senator Groff to meet with the Chairman of the Sub-Committee and draw up amendments as they desired.

Senator Groff moved the meeting be adjourned. Seconded by Senator Smith. Carried. The Senate Committee on Banks and Banking meeting adjourned at 1:30 P. M.

These rates with respect to automobiles are:

RATE SCHEDULE - INSTALLMENT SALES ACTS

	<u>Automobiles</u>			
	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>
Connecticut	\$7 per \$100	\$9 per \$100	\$12 per \$100	\$14 per \$100
Florida	\$8 per \$100	\$11 per \$100	\$15 per \$100	
Iowa	\$7½ per \$100	\$10½ per \$100	\$13½ per \$100	
Kansas (Mont)	\$7 per \$100	\$10 per \$100	\$13 per \$100	
Kentucky	\$9 per \$100	\$13 per \$100	\$15 per \$100	
Maine	\$7 per \$100	\$11 per \$100	\$13 per \$100	
Maryland	\$9 per \$100	\$12 per \$100	\$15 per \$100	
Michigan	\$6 per \$100	\$9 per \$100	\$12 per \$100	
Minnesota	\$8 per \$100	\$11 per \$100	\$13 per \$100	
"Model Bill"*	\$8 per \$100	\$11 per \$100	\$14 per \$100	\$16 per \$100
Montana HB89	\$7 per \$100	\$9 per \$100	\$11 per \$100	
New York	\$7 per \$100	\$10 per \$100	\$13 per \$100	
North Dakota	\$7 per \$100	\$10 per \$100	\$13 per \$100	
Oregon	\$8 per \$100	\$10 per \$100	\$12 per \$100	
Pennsylvania	\$6 per \$100	\$9 per \$100	\$12 per \$100	
South Dakota	\$7½ per \$100	\$9 per \$100	\$13½ per \$100	
Wisconsin	\$7 per \$100	\$9 per \$100	\$12 per \$100	\$15 per \$100

*Authored by American Finance Conference, Inc., Chicago.

Classes: 1 - any new motor vehicle; 2 - any model not over 2 years old; 3 - any model more than 2 years old; 4 - (where used) models older than 3 or 4 years old, that is, older than the limit of class 3.

Other regulated states do not follow exactly the rate schedule system indicated above but the actual charges compare to those above.

The rates used for goods and services other than automobiles as involved in House Bill 89 are the same as used in the bills in Kansas and similar state legislation.

To summarize: - Why is an act to regulate retail installment selling necessary?

- Montana now does not have such a law.
- Twenty some other states do and several states will introduce such laws in coming sessions.
- To fix by law, a maximum fee that may be charged on installment sales contracts.
- To protect the public from excessive and unspecified sales financing charges.
- To place the responsibility for policing such financing regulations in the hands of a state authority (which is not now the case.)
- To establish the final difference between a cash sale price and a time sale price.

This law closely follows the language and rates of similar laws now in force in other states.

It does not preclude the dealer or any merchant from holding any of his own paper, without being licensed.

It will not prevent the purchaser from establishing credit and paying a "cash price" by borrowing money at any rate he may be able to obtain from any bank, finance company or other financial institution.

Since the United States Congress passed the "Truth in Labeling Law" which requires the manufacturer to place a price label on every new car for sale, the establishing of maximum finance installment charges would place the purchaser in position to figure out his own time sale price. The purchase price and the time sale price would then be of record, by law. This law applies to goods and services other than automobiles, that are paid for "on time."

This law will not create a new state board or commission nor should it increase the personnel in the Superintendent of Banks' office significantly.

INFORMATIVE
READING
MADA

Comments on House Bill No. 89
"Montana Retail Installment Sales Act"

The sale of property "on time" is not regulated in the state of Montana. At least twenty other states have legislation on their statute books that are similar to the proposed "Montana Retail Installment Sales Act."

The difference between the "cash price" of an item sold and the "time price" is not interest and the fact that the difference exceeds the rate of interest permitted by the usury laws is immaterial. The decisions of the courts of the United States have established this principle, which is sometimes referred to as the "time price doctrine." The rationale of these decisions is that the owner of property may sell it at whatever price and on whatever terms he may determine. As an example, a seller of an item may have a "cash price" on an item of \$100 and a "time price" of \$150 in the event the purchaser wishes to buy "on terms" by making payments over a period of time. The relationship of the added \$50 to the time over which the item will be paid for is not the same as the charge made for the use of money over the same period, which would properly be called "interest." The legal principles stated above may be found in 91 Corpus Juris Secundum, Usury, Sec. 18 and the following annotations: 48 A.L.R. 1442; 57 A.L.R. 880; 104 A.L.R. 245; 143 A.L.R. 238.

It is obvious that the time price differential must take account of factors not present in making a loan to a prime rate borrower - heavier handling charges, heavier collection charges and so forth. The time price doctrine is particularly applicable where the object sold is subject to depreciation in value, as for instance an automobile. The time price doctrine is followed by the courts of the various states of the United States with the exception of decisions of the Supreme Court of Arkansas, which seems to be contrary, and a recent decision by a lower court in the state of Kansas, which is hereafter mentioned.

When sellers of articles do the bulk of their business on "time sales", as automobile dealers do, it is important that there be a ready market for sales finance paper for such dealers are in the selling business and not in the finance business. If the ready market for sales finance paper is cut off, the business of sellers is ruined. Such a situation developed in the state of Kansas early in 1958 when the attorney general of Kansas brought an injunction suit to restrain the collection by Commercial Credit Corporation of moneys under "time sales" contracts contending that the transactions involved violated the maximum interest rate provisions of the Kansas Small Loan Law. A preliminary injunction was granted and installment sales in Kansas practically ceased. At a special session of the Kansas Legislature, in early 1958, the Kansas Sales Finance Act was passed. It was decided by automobile dealers, consumers, public officials and legislators alike that the only way to eliminate any questions that the litigation raised (the litigation is now pending on appeal in the Kansas Supreme Court) was the passage of legislation. The "Montana Retail Installment Sales Act" is patterned after this Kansas Law to quite an extent.

In other states the comparably legislation was passed to eliminate what appeared to be unreasonable differences between "cash price" and "time price." Many of these statutes relate only to the sale of automobiles. The permitted charges increase with the age of the car sold. These increases are justified on the grounds that the older automobiles involve less security, greater risks and, in many cases, persons with poorer credit ratings.

The principle objectives of the proposed bill are:

- (1) To eliminate unreasonable differences between "cash price" and "time price" and
- (2) To assure a market for sales finance papers so that those persons selling most of their items on "time", such as automobile, appliance and equipment dealers, cannot be caught in the unfortunate situation that existed in the state of Kansas last year.

The Bill does not affect, in any way, the maximum interest or other charges that may be made on direct loans from lending institutions regardless of the fact they may involve mortgages on automobiles or other property.

The purpose of requiring licensing is to identify those who are engaged in Sales Finance business. Otherwise, irresponsible outfits can and would operate as some unscrupulous finance companies and other companies from other states have already done.

The rates proposed in House Bill No. 89 are in line with rates charged in other states and are lower than in some states with similar legislation.

shall not affect, impair or invalidate any other part of this act.

Repealing clause.

Section 17. All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 17, 1959.

CHAPTER 281

An Act to Amend Section 75-3804, Revised Codes of Montana, 1947, Relating to the Form and Marking of Ballots in School District Elections; Substituting the Word "Levies" in the Form of the Ballot; and Repealing All Acts and Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That Section 75-3804, Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Ballot form—
school district
elections—
additional levies.

"75-3804. (1222) **Form and marking of ballot—Conduct of election.** The ballot furnished electors at said election shall have printed thereon the following: 'Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy) for the purpose of (insert the purpose for which the additional tax levy is made)?'

- ☐ For an additional levy to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills.
- ☐ Against an additional tax levy to raise the sum of (state amount to be raised by additional tax levy), and being approximately (give number) mills.

"The voters shall mark the ballots in the same manner as ballots are marked under the election laws of this state. The election shall be held, votes canvassed and returns made as in other school elections. If the majority voting on the question are in favor of such ad-

ditional levy, the board of trustees of said school district shall so certify to the board of county commissioners of the county in which said school district is situated the amount authorized by such election to be raised by such additional levy and such board of county commissioners shall make such additional levy in such number of mills as will raise such amount in the same manner that the levy for special taxes in said district is made."

Section 2. All acts and parts in conflict herewith are hereby repealed. Repealing clause.

Approved March 17, 1959.

CHAPTER 282

An Act Relating to and Regulating the Retail Installment Selling and Financing of Goods, Including Motor Vehicles and Services; to Define Terms Used Herein; to Require the Licensing of Sales Finance Companies; to Vest the Administration and Enforcement of This Act in the Office of the State Superintendent of Banks; to Prescribe the Powers, Duties, Authority and Jurisdiction of Such Superintendent of Banks With Respect to This Act; to Authorize the Adoption and Promulgation of Rules and Regulations; to Prescribe and Regulate the Form and Content of Contracts Covering the Retail Installment Sale of Goods and Services; to Regulate the Inclusion of Insurance in a Retail Installment Sale; to Limit the Amount of the Finance Charge That Can be Made for Such Retail Installment Sales; to Regulate Delinquency Charges and the Refinancing of Such Retail Installment Sales; to Require a Partial Refund of Such Charges on Prepayment; to Make Certain Acts Unlawful and Providing Penalties for Violations of This Act; Providing for Waiver and Severability.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Short title.** This act may be cited as the Title.
"Montana retail installment sales act."

Definitions.

Section 2. **Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

"Goods."

(a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom.

"Services."

(b) "Services" means work, labor and services furnished in the delivery, installation, servicing, repair or improvement of goods.

"Motor vehicle."

(c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.

"Retail buyer" or "buyer."

(d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction under a retail installment contract and not for the purpose of resale.

"Retail seller" or "seller."

(e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer under a retail installment contract.

"Retail installment transaction."

(f) "Retail installment transaction" means a contract to sell or furnish or the sale or furnishing of goods or services by a retail seller to a retail buyer under a retail installment contract for a time sale price payable in one or more deferred installments.

"Retail installment contract" or "contract."

(g) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state pursuant to which a buyer promises to pay in one or more deferred installments the time sale price of goods and/or services. The term includes a chattel mortgage, conditional sales contract and a contract for the bailment or leasing of goods

by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(h) "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment contract, if such sale had been a sale for cash at a cash price instead of a retail installment transaction at a time sale price. The cash sale price may include any taxes, registration, certificate of title, license and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing or improving the goods.

"Cash sale price."

(i) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

"Official fees."

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of the retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

"Principal balance."

(k) "Finance charge" means the amount, as limited by section 8 hereof, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

"Finance charge."

(l) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate

"Time sale price."

identified charge is made therefor and the amounts of the official fees and the finance charge.

"Sales finance company."

(m) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, Morris Plan company or savings and loan association, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

"Holder."

(n) "Holder" of a retail installment contract means the retail seller of the goods or services under the contract, or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

"Person."

(o) "Person" means an individual, partnership, corporation, association, and any other group however organized.

"Superintendent."

(p) "Superintendent" means the state superintendent of banks of the State of Montana.

Words.

(q) Words in the singular include the plural, the masculine includes the feminine and the neuter and vice versa.

Act does not apply to banking.

(r) This act shall have no application to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by such banks or other lending institutions.

Licensing of sales finance companies required.

Section 3. Licensing of sales finance companies required. (a) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act: Provided, however, that no bank, trust company or savings and loan association authorized to do business in this state shall be required to obtain a license under this act but shall comply with all of the other provisions of this act.

(b) The application for such license shall be in writing, under oath and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent information as the superintendent may require.

Application for license.

(c) The license fee for each calendar year or part thereof shall be the sum of one hundred dollars (\$100) for each place of business of the licensee in this state.

Fee.

(d) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the superintendent shall endorse the change of location of the license without charge.

Display.

(e) Upon the filing of such application, and the payment of said fee, the superintendent shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act under any other name.

Issuance.

Section 4. Denial, suspension or revocation of licenses.

(a) Renewal of a license originally granted under this act may be denied, or a license may be suspended or revoked by the superintendent on the following grounds: (1) Material misstatement of fact in the application for license; (2) wilful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

Denial, suspension or revocation.

(b) If a licensee is a partnership, association or cor-

Cause.

poration, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantage accruing from said acts or otherwise ratified said acts.

Hearing on order
to show cause.

(c) No license shall be denied, suspended or revoked, except after hearing thereon. The superintendent shall give the licensee at least ten (10) days written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the superintendent and shall not be effective until after thirty (30) days' written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

Right to writ
of review.

(d) Any person, licensee, or applicant, considering himself aggrieved by an order of the superintendent may within thirty (30) days from the entry of the order complained of, apply for writ of review in accordance with the provisions of chapter 90 of title 93 of the Revised Codes of Montana of 1947.

Power of
superintendent
to investigate.

Section 5. **Investigations and complaints.** (a) The superintendent, or his duly authorized representatives, shall have the power to make such investigations as he shall deem necessary and, to the extent necessary for this purpose, he may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts and documents.

(b) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the superintendent a written complaint setting forth the details of such alleged violation and the superintendent, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

Complaint by
retail buyer.

Section 6. **Powers of superintendent.** (a) The superintendent shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All rules and regulations of general application shall be filed in the office of the superintendent. A copy of every such rule or regulation shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date: Provided, however, the failure of a licensee to receive a copy of such rules or regulations shall not exempt him from the duty of compliance with such rules and regulations lawfully promulgated hereunder.

Powers and duties
of
superintendent.

(b) The superintendent shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this act. The superintendent shall have the power to administer oaths and affirmations to any person whose testimony is required.

Subpoenas and
oaths.

(c) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the county in which the licensed premises are located may, upon application and proof of such refusal, make an order awarding process of subpoena or subpoena duces tecum for the witness to appear before the superintendent and to give testimony, and to produce evidence as required thereby. Upon filing such order, in the office of the clerk of the said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

Process
of subpoena.

Attachment.

(d) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the superintendent may apply to the judge of the court issuing such subpoena for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars (\$100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

Penalty.

Requirements of sales contracts.

Section 7. Requirements and prohibitions as to retail installment contracts. (a) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such cases, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

Printed contracts.

Size type.

Notice to buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least eight (8) point type. The contract shall contain the following notice in a size equal to at least ten (10) point bold type:

1. "Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. "You are entitled to an exact copy of the contract you sign. Copy.

3. "Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge." Advance payoff.

(c) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least ten (10) point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case. Contract for sale of motor vehicle—size type.

(d) The seller shall deliver to the buyer or mail to him at his address shown in the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten (10) point bold type and, if contained in the contract, shall appear directly above the buyer's signature. Copy to buyer. Right to rescind.

(e) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods sold or services furnished or to be furnished, and shall clearly state and describe any collateral security taken for the buyer's obligation. Acknowledgment—size type. Information required in contract.

(f) The contract shall contain the following items: (1) The cash sale price of the goods or services; (2) the amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of the goods traded in; (3) the difference between items one and two; (4) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits; (5) the amount of official fees; (6) the principal balance which is the sum of items three, four and five; (7) the amount of the Items required in contract.

finance charge; (8) the total amount of the time balance stated as one sum in dollars and cents, which is the sum of items six and seven, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

Limitation on
insurance
charges.

Insurance
requirements.

Policy.

Existing
insurance.

(g) The amount, if any, included for insurance, which may be purchased by the holder of the contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where such rates are required by law to be approved by said department. All such insurance shall be written by an insurance company authorized to do business in this state and shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder, as well as the buyer, but such insurance shall be limited to insurance against substantial risk of loss, damage or destruction of the goods. Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer. If such insurance for which such identified charge is made insures the life, safety or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within thirty (30) days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary thereof. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company:

Provided, however, that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonable or arbitrarily withheld, and further, that the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his agent, broker or company, shall be optional with the seller.

(h) If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder, shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

On cancellation
of insurance.

(i) A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed fifteen dollars (\$15.00).

Transfer of
equity.

Fee.

(j) The holder may collect a delinquency charge on each installment in default for a period not less than ten (10) days in an amount not in excess of five per cent (5%) of each installment or five dollars (\$5.00), whichever is less or, in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding fifteen per cent (15%) of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.

Delinquency
charge.

Attorneys fees.

(k) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of section 7 (d) of this section, of delivery of a copy of a contract shall be con-

Signing of
contract.

clusive proof of such delivery, that the contract when signed, did not contain any blank spaces except as herein provided, and of compliance with this section 7 in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract.

Statement of
payments.

(l) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

Release on full
payment.

(m) After payment of all sums for which the buyer is obligated under a contract, and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

Finance charge
limitation.

Section 8. **Finance charge limitation.** (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:

(1) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars (\$7) per one hundred dollars (\$100) per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars (\$9) per one hundred dollars (\$100) per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars (\$11) per one hundred dollars (\$100) per year.

(II) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does

not exceed three hundred dollars (\$300), eleven dollars (\$11), per one hundred dollars (\$100) per year; (ii) if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); (iii) if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000).

Computation—
minimum.

(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars (\$20) may be charged on any retail installment transaction.

(c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

Assignment of
contract.

(d) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the goods if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

Notice to
buyer.

Section 9. **Refunds on prepayment.** Notwithstanding the provisions of any retail installment contract to the

Refunds on
prepayment.

contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning one (1) month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1.00) no refund need be made.

Refinancing.

Section 10. **Refinancing retail installment contract.** The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or defer payment or payments, or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to section 9 of this act, at the rate of the finance charge specified in section 8 (a) of this act and by reclassifying in the case of motor vehicles by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under section 8 (b) and an acquisition cost under section 9 shall not apply in calculating refinance charges on the contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than two (2) months, the holder may at his election charge and collect for such deferment an amount equal to the difference between (a) the refund required for prepayment in full under section 9 as of the scheduled due date of the first deferred installment, and (b) the refund required for prepayment in full as of one

(1) month prior to said date, times the number of months in which no scheduled payment is made.

Section 11. **Penalties.** (a) Any person who shall knowingly violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both. Penalties.

(b) Any person violating sections 7, 8, 9 or 10 of this act, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract. Recovery denied.

Section 12. **Waiver.** Any waiver of the provisions of this act shall be unenforceable and void. Waiver void.

Section 13. **Severability and constitutionality.** If any provisions of this act or the application thereof to any person or circumstance is held unconstitutional, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision. Severability and constitutionality.

Approved March 18, 1959.

CHAPTER 283

An Act Relating to Loans and Interest and Other Charges and Expenses on Loans; to Define "Consumer Type Loan Business" and Certain Other Terms; to Regulate and License the Business of Making Consumer Type Loans in the Amount of One Thousand Dollars (\$1,000) or Less; to Create the Office of Consumer Loan Commissioner, and to Provide for the Appointment and Compensation of a Consumer Loan Commissioner and to Prescribe the Powers, Duties, Authority and Jurisdiction of Such Commissioner; to Authorize the Adoption and Promulgation of Rules and Regulations; to